

REMARKS

In the interest of progressing this patent application to issuance without delay, and without prejudice, Claim 14 has been amended to claim the booster alpha-ionone (B1 booster) in combination with the booster LAMEA (fatty acid amide, B1 booster), which in combination with the retinoid and the selected oils at POV of less than or equal to about 12, are free of art. Support for this amendment is found throughout the Specification, and on pages 22 and 43 for example. Care has been taken not to introduce any new matter.

The Present Invention

The present invention is directed to a combination of specified retinoids and specified retinoid boosters that are stabilized in a composition, wherein each constituent of the oil phase of the oil-in water emulsion has a peroxide value (POV) of less than or equal to about 12, preferably less than or equal to about 6.

The present invention provides the dual benefit of enhancing retinoid conversion within the skin while increasing the stability of the retinoids by the removal of any starting materials having a POV of greater than 12, and preferably greater than 6.

The POV specification is critical for removing oil impurities that would have POV of greater than 12 and would thereby contribute to retinoid instability. For example, while the general category of mineral oil is known, depending on the commercial source of the oil, it may have undesirable impurities with POV greater than 12. Specifying the POV in the present claims excludes these impurities, or removes oils with POV greater than 12, which would promote instability. The resulting inventive compositions extend retinoid stability. Support for "removal of any starting materials having a peroxide value of greater than 12 and preferably greater than 6" may be found on page 32 and elsewhere in the Specification.

Claims 1-2, 7-8, 13, 14 and 15 Are Not Obvious Under 35 USC § 103

Claims 1-2, 7-8, 13 and 15 (all but 14) were rejected under 35 U.S.C. 103(a) as being unpatentable over Granger et al. (USPN 5,716,627).

According to the Office Action, Granger et al. teaches a skin-conditioning composition comprising (a) retinol or retinyl ester, (b) azole (e.g. clotrimazole), (c) fatty acid amide (B1 compounds), and (d) cosmetically acceptable vehicle.

The Office Action does not address an important limitation of the present claims, i.e. that each constituent of the oil phase of the oil-in water emulsion has a peroxide value of less than or equal to about 12, preferably less than or equal to about 6. Granger et al fail to disclose or suggest a POV. As such, a *prima facie* case of obviousness has not been made out.

According to the Office Action, the prior art teaches a composition comprising the same elements as those claimed herein in the same weight percentages and that a compound and its properties are not mutually exclusive; A composition comprising same/overlapping amounts of the same ingredients will invariably possess the same characteristics, e.g., peroxide values.

Firstly, a composition with the same ingredients is not disclosed in Granger '627. Example 7 of Granger et al. specifies clotrimazole, which is not one of the claimed boosters. Also, the perfume in the Examples is not specified and therefore it does not specify a POV of less than or equal to 12.

Secondly, the Office Action has not provided a reason to provide a composition (even if it were identically disclosed in Granger et al.) with a POV of less than or equal to 12. Applicants respectfully submit that, not all the named ingredients in the cited are the same, and they will not “invariably” possess the same characteristics. For example, while the general category of mineral oil is known, depending on the commercial source of the oil, it may have undesirable impurities with POV greater than 12. Specifying the POV in the present claims excludes these impurities, or removes oils with POV greater than 12, which would promote instability. The resulting inventive compositions extend retinoid stability.

There is no disclosure of POV of the oil phase components. The mere fact that the cited art could be modified as proposed in the Office Action is not sufficient to establish a *prima facie* case of obviousness. See In re Fritch, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). The Office Action must explain why the cited art would have suggested to one of ordinary skill in the art the desirability of the modification. See Fritch, 23 USPQ2d at 1783-4. The Office Action has not provided such an explanation. For these reasons, it is concluded that the Office Action has not carried the burden of establishing a *prima facie* case of obviousness of the invention recited in any of the Applicants' claims.

Claim 14, As Amended, Is Free of the Art

Claim 14 was rejected under 35 U.S.C. 103(a) as being unpatentable over Granger et al. (USPN 5,716,627) as applied to 1-2, 7-8, 13 and 15, and further in view of Granger et al. (WO 98/13020).

Claim 14 has been amended to claim the booster alpha-ionone (B1 booster) in combination with the booster LAMEA, which in combination with the retinoid and the selected oils at POV of less than or equal to about 12, are free of art.

Granger et al. (WO 98/13020) teaches away from using a fatty acid amide. Therefore, a retinoid composition comprising LAMEA (B1 booster, fatty acid amide) would not be within the scope of Granger WO'020, and it would not be proper to combine it with Granger '627. Accordingly, Claim 14, as amended, is in condition for allowance.

The Granger et al. references, either alone or in combination, do not address the problem to which the present invention is addressed, i.e., improvements in stability of retinoids achieved by controlling POV of each constituent of the oil phase of the oil-in-water emulsion, while increasing the effectiveness of the retinoids.

In view of the foregoing amendments and comments, Applicants request the Examiner to reconsider the rejections and now allow the claims.

If a telephone conversation would be of assistance, Applicant's undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,



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